IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 10994 of 2007(S)

OA.910/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, DEPARTMENT OF POSTS, NEW DELHI.

2. CHIEF POSTMASTER GENERAL, TRIVANDRUM.

3. SENIOR SUPERINTENDENT OF POST OFFICES, ERNAKULAM DIVISION, ERNAKULAM.

4. ASSISTANT SUPERINTENDENT OF POS OFFICES, ERNAKULAM SUB DIVISION, ERNAKULAM.

BY ADV. SRI.K.M.JAMALUDHEEN, CGC

RESPONDENTS:

JESSY M.A., D/O.M.C.ANTONY, GDSMD, MULAVUKAD, RESIDING AT MANKUZHITHUNDIL HOUSE, VYTTILA P.O., ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NO. 10994 OF 2007

Dated this the 29th day of March, 2007.

JUDGMENT

Koshy, J.

Writ petitioners are challenging the order of the Central Administrative Tribunal in O.A.NO.910/2004, under Article 227 of the Constitution of India. The respondent was terminated alleging that she got appointment by involving corrupt practice and influencing the appointing authority. The above termination order was set aside by Ext.A5 order of the Tribunal in O.A.No.450/2001. However, the Tribunal gave the liberty to conduct fresh enquiry, so that the petitioner can establish the charges against her in enquiry so conducted. The Tribunal's decision was accepted by the department and she was reinstated. She again approached the Tribunal holding that even though termination order was set aside, she was not given the back wages. Thereafter, Annexure A6 was passed in M.A.796/2003 in O.A.450/2001, wherein the Tribunal directed the employer to decide the question of back wages while final decision is taken if fresh enquiry is conducted. No enquiry was conducted and petitioner decided that no enquiry need be conducted but back wages were denied even though there was no allegation that they have got any evidence regarding the alleged malpractice. Only reason stated is that since she did not work, she is not entitled to the back wages. Again she approached the Tribunal and by impugned order the

Tribunal found she is entitled to back wages. The Tribunal's earlier order only directed the employer to decide the question of back wages according to rules. Hence there is no justification for terminating the service of the employee. That portion is covered in O.A.450/2001. In that order, even though Tribunal gave an opportunity to conduct enquiry as to take action legally, petitioner decided not to conduct any further enquiry. Hence her termination of service was without any reason. Hence it was illegal. Hence she is entitled to back wages for the period, she was illegally kept out of employment. Tribunal also considered the decision of *Union of India vs. Madhusudan Prasad* (2004 (1) SCC 43) and also orders passed by the Ministry regarding grant of back wages. There is no allegation that because of the act of the employee, loss has caused to the department. In *K.C.Joshi vs. Union of India* (1985(3) SCC 153), the Supreme Court observed as follows:-

> "13. Ordinarily, where the order of termination of service is shown to be bad and illegal, the necessary declaration must follow that the employee continues to be in an uninterrupted service and he is entitled to full back wages".

Since no enquiry was conducted and since there is no evidence to show that she committed any malpractice or any type of misconduct and she was illegally denied the work till she was reinstated, she is entitled to back wages. When there is illegal termination of employment without any justification, in the absence of evidence of her employment for the period in

question, grant of back wages is automatic. We see there is no patent illegality or perverse finding in the order passed by the Tribunal. The Writ Petition is dismissed. However, we grant three months time to implement the order of the Tribunal.

J.B.KOSHY, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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